

Excerpts
Planning Commission Minutes
June 9, 2004

Application No. UP-638-04, Mike Pickett: Request for a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize the establishment of a detached accessory apartment in conjunction with a single-family dwelling located at 209 Jara Lane. The applicant is proposing to construct the approximately 692-square-foot apartment on the second floor of an existing two-story detached garage. The 0.31-acre parcel is located on the east side of Jara Lane, approximately 350 feet south of its intersection with Hilda Hollow and is identified as Assessor's Parcel No. 37-112B-81. The property is zoned R13 (High density single-family residential) and is designated for High Density Residential development in the Comprehensive Plan.

Ms. Amy Parker, Senior Planner, presented a summary of the staff report dated May 28, 2004. She then referred to a letter from **Vonda J. Dunn, P.C.**, Attorney At Law representing The Greenlands Homeowners Association, addressed to Amy Parker and dated May 27, 2004. In the letter, Ms. Dunn objected to the application because, among other stated reasons, "it violates the established covenants running with the land as well as the rules and regulations of the community." She noted in the letter that no application for the proposed structure was presented to the homeowners' association (HOA) and, had it been, it would have been denied. [Letter attached to minutes of record.]

In conclusion, **Ms. Parker** noted the staff recommendation of approval as stated in the staff report. Ms. Parker requested a statement from the County Attorney regarding the County's position with regard to HOA covenants.

Mr. James A. Barnett, County Attorney, advised that zoning issues are separate from HOA covenants and County zoning actions do not affect the legal status of the covenants. Whether the Commission recommends approval or denial and whatever the Board determines, the HOA retains the right to enforce its covenants by whatever means are at its disposal.

Chair Simasek opened the public hearing.

Svein Lassen, Esq., 701 Town Center Drive, Newport News, VA, represented the applicant. He remarked that The Greenlands is an unusually successful planned development and typical lots in the development contain very nice houses on lots that are close together. However, he added, the property in question is not typical of the majority of the lots in The Greenlands because it comprises one-third acre of land at the end of a cul de sac and is one of the few lots in the development that could accommodate a detached garage as proposed. Mr. Lassen believed that because Mr. Pickett had built more houses in the development than any other builder, he would do nothing to adversely affect the community. He said no architectural approval was sought or granted for the houses Mr. Pickett built. He added the plan does not propose that the accessory apartment be accessed through the main house. **Mr. Lassen** opined there can be different

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interpretations of the HOA covenant language and, in his opinion, the accessory apartment would not affect the rights of the HOA.

Mr. Mike Pickett, 209 Jara Lane, said that when he moved to The Greenlands he spoke with the appropriate County officials about requirements for building the proposed structure. He then applied for permits to build the structure, with plans to attach it to the main house by a breezeway. Mr. Pickett stated the purpose is to provide a home-school space for his children and foster children. He does not intend to ever rent out the space over the garage, he added, because it is intended specifically for use by his family.

Vonda Dunn, Esq., 240 Mustang Trail, Virginia Beach, VA, spoke as legal counsel for The Greenlands Homeowners Association. She said the applicant is a builder who is blatantly disregarding the covenants that run with the land. She cited Section 1 of the covenants and said the proposal is in direct conflict with that declaration. No other homes within The Greenlands are allowed living quarters within an accessory building, according to Ms. Dunn, and stated that she advised her clients there is a legal path outside this process to alleviate conflicts within the community.

Mr. Tom Palmer, 100 Quincy Court, submitted a copy of the site plan of Mr. Pickett's property at 209 Jara Lane. He read aloud a message from his neighbor, **Mr. Guy Tyler**, 211 Jara Lane, dated May 27, 2004 in which Mr. Tyler requested denial of the application based on his concerns about possibly decreasing property values, its incongruity with the concept of single-family living, and it "circumvents the covenants of the Home Association." [A copy of the site plan and Mr. Tyler's comments are attached to the minutes of record.]

Mr. Palmer added that the site plan depicts a structure that appears to be two separate homes squeezed onto a single lot. He believed it was out of place with the single-family homes in the neighborhood. He said Mr. Pickett is subject to the same architectural controls as are all of the other homeowners in the The Greenlands.

Mr. Rob Anderson, 407 Blevins Run, serves on The Greenlands Board of Directors and as President of the HOA. Mr. Anderson recommended denial in accordance with the desires of the HOA and the homeowners of The Greenlands because it is out of character with the community and with the Board of Directors' desires and is contrary to the covenants. No other homes have detached garages and will not because the architectural review committee will not approve them. He noted that all homeowners are subject to the same architectural rules when making changes on their lots.

Mr. Steven Ryan, 104 Lance Way, a member of the Board of Directors of The Greenlands HOA, requested denial because the homeowners in the cul de sac do not want it and the applicant should be familiar with the procedures adopted by the HOA. He questioned if use of the addition for educating the children would bring into question the standards for educational facilities.

Mr. Alan Campbell, 303 Tristen Drive, spoke as a homeowner and member of the Board of Directors of The Greenlands HOA. He did not think the garage as proposed was a good fit between two large homes and is a jarring sight from the cul de sac. He added that Mr. Pickett made no application to the HOA to build the garage.

Mr. Svein Lassen noted that approval would not require a waiver of setbacks because the setbacks comply with zoning regulations. The issue, he said, is not about size or lot coverage but about a use permit for an accessory apartment that is not visible from the street, fits on the lot, is constructed of top-grade materials to match the primary dwelling, and would only finish off the garage. Mr. Lassen also noted staff proposed conditions of approval that will ensure property use of the property.

Seeing no others who wished to speak, **Chair Simasek** closed the public hearing.

Responding to a request, **Mr. Barnett** reiterated his earlier remarks about homeowner association covenants stating that whatever decision the County makes would have no impact on the covenants. By denying the use permit, the HOA issues would be settled. Granting it would not deprive the HOA of whatever action it might take and the applicant could not defend his case based on the County granting the application, nor would the Zoning Ordinance become the instrument by which the covenants are interpreted; the covenants stand on their own.

Mr. Ptasznik asked for the Zoning Ordinance definition of "accessory apartment." **Mr. Carter** said the defining element of this particular application is the proposal to install a full bath in the space over the garage thereby converting it to a habitable space. He added that while it is structurally attached to the principal structure by the roof attachment, it is defined as a detached accessory apartment because the connection to the principal structure is not habitable space.

Mr. Ptasznik did not support approval because it does not meet the standards of an accessory apartment, namely providing space for relatives or overnight guests.

Mr. Barba noted that the County is not bound to the covenants of the HOA but the applicant, as a major builder, was aware of them; and it appears accessory apartments were never planned for this type of development.

Mr. Ptasznik moved adoption of Resolution PC04-15.

PC04-15

On motion of Mr. Ptasznik, the following resolution was defeated for lack of a majority:

A RESOLUTION TO RECOMMEND APPROVAL OF A SPECIAL USE
PERMIT TO AUTHORIZE A DETACHED ACCESSORY APARTMENT AT
209 JARA LANE

Mr. Hamilton	Yes
Mr. Heavner	No
Mr. Barba	No
Mr. Harvell	Yes
Mr. Ptasznik	No
Mr. Simasek	Yes
Mr. Davis	Absent

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